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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Market Entry and Regulation of )  
Foreign-affiliated Entities )

IB Docket No. 95-22  
RM-8355  
RM-8392

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**REPLY COMMENTS OF THE SECRETARY OF  
COMMUNICATIONS AND TRANSPORTATION OF  
MEXICO**

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## **SUMMARY**

A substantial number of the parties filing initial comments in this proceeding concurred with the Secretary of Communications and Transportation of Mexico's ("SCT's") position that the equivalent market access requirement will not encourage foreign countries to open their telecommunications markets and, in fact, will likely have the opposite effect. Comments filed both by representatives of foreign governments and foreign carriers urge the Commission to lead by example rather than to unilaterally attempt to impose its own regulatory policies on other nations. As the comments show, many countries, including Canada, Germany, France, Great Britain, and Mexico, as well as the European Union, are liberalizing their home telecommunications markets and increasing competition. These actions are the result of each country's evaluation of its own economic and social needs, not a response to the presence or absence of any particular United States telecommunications policy. While the United States experience is a valuable example and affirms the economics underlying competition, each country ultimately must determine its own regulatory structure.

Furthermore, many commenting parties provide examples of why the equivalent market access requirement will fail to achieve the goals articulated by the Commission. A number of foreign carriers show that the proposed test increases the number of factors to be considered in a Section 214 application and therefore increases the Commission's discretion over such applications. Contrary to the Commission's expectations, this discretion will increase rather than reduce regulatory uncertainty. In addition, as shown by the comments of AT&T and BT-North America, the equivalent market access test could become a tool used by existing United States carriers to protect their vested interests. The Commission should not create a regulatory process which permits the incumbent carriers to restrict new entry and ultimately harm competition. Rather, the Commission should adopt a policy that adequately recognizes the rapidly evolving variety of corporate structures which are becoming the vehicles for the provision of global telecommunications services.

Finally, a number of parties concur with SCT's comments that the Commission should not codify the existing proportional return policy. This policy was developed in a market environment in which United States carriers typically interconnected with a monopoly foreign correspondent. This paradigm is rapidly changing and the current policy should be modified to reflect those changes, not codified.

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**REPLY COMMENTS OF THE SECRETARY OF COMMUNICATIONS AND  
TRANSPORTATION OF MEXICO**

The Secretary of Communications and Transportation of the United States of Mexico ("SCT"), acting through its Undersecretary of Communications and Technological Development, hereby submits its reply comments in the above-captioned matter. The initial comments of many other parties support SCT's views on these issues and, in addition, raise additional issues with which SCT concurs.

**I. INTRODUCTION**

As indicated in its initial comments in this proceeding, SCT shares the Commission's fundamental regulatory philosophy regarding both domestic and international services. SCT concurs that the telecommunications industry is becoming increasingly global and that the best interests of telecommunications users, as well as the national economies, are served by the development of open and competitive telecommunications markets. SCT also concurs with the Commission's evaluation of the proper role of national telecommunications regulatory authorities in fostering the development of such competition. SCT's own efforts to liberalize the Mexican telecommunications market are strong evidence of its commitment to these fundamental principles.

As other commenters noted in agreement with SCT, it is inevitable that national regulatory authorities seeking to implement the broad economic principles underlying

competition also incorporate the national interests of their particular country. However, adoption of policies that protect the economic interests of selected domestic companies impede the openness of the market to additional competitors from abroad should not be confused with enhancement of the broader domestic public economic interest. The effective market access test must be evaluated in the broader context of United States international trade policies and national security interests and should be consistent with the general United States policy against protectionist trade barriers.<sup>1</sup> Because the equivalent market access policy is unlikely to help foster global competition, however, it does not appear to be consistent with these broader United States policies.

Moreover, the “equivalent market access” policy proposed in the Notice of Proposed Rulemaking (“NPRM”) would appear to constitute essentially an increased emphasis on a single factor that already is included the analysis of a Section 214 application rather than a fundamental change of Commission policy. As its clear precedents demonstrate, the Commission’s current decisionmaking criteria applied to 214 applications filed by foreign entities is materially based upon the openness of the applicant’s home market.<sup>2</sup> In fact, the NPRM makes clear that the Commission would continue to consider other criteria<sup>3</sup> and would even consider grant of 214 applications in the absence of a satisfactory showing of equivalent market access.<sup>4</sup> Because of this high degree of discretion, the Commission’s laudable objective of increased regulatory certainty would not be furthered by this proposal. Instead, as described in the comments of several parties, the proposal could form the basis of retaliatory actions and, because of its fundamental character as a market barrier, do little to truly encourage the broadening of global competition. SCT supports these positions and urges the Commission to modify the policies contained in the NPRM accordingly.

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<sup>1</sup> See, e.g., Comments of National Telecommunications and Information Administration at 10-12.

<sup>2</sup> See, e.g., NPRM at ¶¶ 11-14.

<sup>3</sup> See, e.g., NPRM at ¶¶ 2, 45.

<sup>4</sup> *Id.* at ¶ 49.

## **II. THE ADOPTION OF THE EQUIVALENT MARKET ACCESS STANDARD WILL NOT INFLUENCE OTHER COUNTRIES TO MODIFY THEIR REGULATORY POLICIES**

Numerous other parties concur with SCT's fundamental premise that countries develop their communications policies based upon an evaluation of their specific economic and social obligations.<sup>5</sup>

The market structure and vitality of a nation's telecommunications industry is a matter of strategic importance to its economic and industrial well being. Regulatory authorities must assess possible modifications to their telecommunications policies, as well as the pace of such changes, in light of the political, social, and economic conditions in their respective countries.<sup>6</sup>

As discussed at length in its initial comments, Mexico has undertaken sweeping measures to restructure all of its telecommunications markets. These steps include the passage of a broad new Telecommunications Law, which includes the provisions described in SCT's comments such as the opening of local, long distance, and international markets to competition, the requirement for non-discriminatory cost-based interconnection and equal access, and open and efficient alternative dispute resolution mechanisms.<sup>7</sup> In addition, the Law provides that applications for concessions for competing public telephone networks must be granted or denied within 120 days of filing. SCT now will develop the comprehensive regulations required to implement this new market structure on a prompt and efficient basis.

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<sup>5</sup> See, e.g., Comments of the Directorate General for Post and Telecommunications of France ("DGPT") at 2-3; Comments of GTE at 3; Comments of Teleglobe at 24.

<sup>6</sup> See, e.g., Comments of Teleglobe at 24-25.

<sup>7</sup> The President of Mexico has submitted the Telecommunications Law to the Mexican Congress. The law has been approved by the Senate, and approval by the Chamber of Deputies is expected within approximately one week of the filing of these reply comments.

Mexico's decision to take these significant restructuring steps, which place its telecommunications regulatory structure among the most liberal in the world, was based on its own evaluation of the economic conditions and needs of Mexico. These actions were not taken in response to the presence or absence of any particular United States telecommunications policy. Specifically, Mexico has taken these actions in recognition of the economic benefits that flow from increased competition, including the development of an advanced infrastructure, increased service penetration, and the availability of new and innovative services.

It has clearly been the case with Mexico, and SCT submits that it is the case with respect to other countries as well, that these actions have not been taken on the basis of either a desire to blindly follow United States telecommunications policy or in response to any perceived threat from the United States regarding restriction of United States market availability to Mexican companies. For example, Deutsche Telekom describes the liberalization of telecommunications markets currently taking place in Germany and throughout the European Union.<sup>8</sup> As is this case with Mexico, these countries have looked to the United States as an example of successful procompetitive policies, not as the arbiter of global telecommunications regulations.

On the other hand, the clear results of these policies as adopted in the United States have provided a valuable demonstration of the efficacy of the underlying economic principles upon which they are premised. Thus, the United States' experience in opening its telecommunications markets to competition has provided guidance to Mexico and others in evaluating their policy alternatives, and it is the concrete results of these policies which have assisted SCT in determining that market liberalization will provide the economic benefits which the underlying theory predicts.<sup>9</sup> In short, it is the demonstrated

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<sup>8</sup> Comments of Deutsche Telekom at 37.

<sup>9</sup> *Id.*



legitimacy of these underlying economic principles, not the unilateral policy decisions of the United States, which has convinced Mexico to restructure its marketplace.

Furthermore, the presence or absence of the proposed equivalent market access policy in the FCC's processing of 214 applications has not been, and would not be, a material consideration for countries that are considering opening their telecommunications markets to competition. This is true even for Mexico, with a relatively large amount of international traffic flowing between it and the United States, when compared to most other countries of the world. The equivalent market access test would be an even less effective "lever" to motivate foreign administrations to adopt U.S.-like telecommunications policies when the amount of traffic between the U.S. and those countries is significantly less than that between the United States and Mexico. Most international traffic to and from the United States involves Canada, Mexico, Great Britain, and Japan. The potential economic impact of the proposed policies is strongest with respect to these countries. However, all four of these countries have already taken significant steps to liberalize their telecommunications markets.

In fact, not only is the equivalent market access requirement an ineffective tool for encouraging competition, it could be counterproductive. Commenters have pointed out that in the face of such a policy, other countries may well respond by imposing similar restrictions on foreign entry into their markets.<sup>10</sup> This would constitute a reversal of the present global trend in favor of competition and liberalization of market access and is inconsistent with the goals articulated by the Commission in the NPRM.<sup>11</sup>

In short, the proposed effective market access test is not likely to be an effective tool in encouraging foreign administrations to further liberalize their telecommunications market, particularly in countries with a small amount of traffic with the United States.

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<sup>10</sup> See, e.g., Comments of Nynex at 2; Comments of DGPT at 2; Comments of Deutsche Telekom at 32-35.

<sup>11</sup> See, e.g., Comments of Nynex at page 2.

### **III. THE EQUIVALENT MARKET ACCESS TEST WILL NOT REDUCE REGULATORY UNCERTAINTY**

The Commission has stated that one salutary goal of the equivalent market test will be increased certainty over the current Section 214 application process.<sup>12</sup> However, because the NPRM proposes to allow the Commission wide discretion in considering other factors and may permit entry despite unsatisfactory showings with respect to equivalent market access,<sup>13</sup> the proposed policy does not increase the assurance that the opening of a given foreign market will result in access to the U.S. market.<sup>14</sup>

Nor will it result in any greater objectivity in the 214 evaluation process. The Directorate General for Post and Telecommunications of France (“DGPT”) points out that the new requirement could be viewed as being added to current procedures, thus increasing the scope and duration of the 214 process and equating to the implementation of new barriers to the entry of foreign entities, causing France serious concern.<sup>15</sup>

Rather than simplify the analysis of a 214 application, an increased focus on the effective market access test as the primary element of the analysis will out of necessity complicate and extend the 214 process when applied on a global basis. It will require the Commission to engage in a process of evaluation of complicated and varied foreign regulatory structures which is fraught with the possibility of misjudgment as to the true economic, political, and social factors underlying the regulatory structures of different countries.<sup>16</sup> Also, the NPRM incorrectly assumes that a foreign carrier of necessity possesses a “primary” home market which the Commission can evaluate. Several

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<sup>12</sup> See NPRM at ¶ 25.

<sup>13</sup> See NPRM at ¶ 49.

<sup>14</sup> See, e.g., Comments of TLD Puerto Rico at 23-24; Deutsche Telekom at 30.

<sup>15</sup> See, e.g., Comments of the DGPT, page 2. While DGPT expresses confidence that the proposed test be adopted as an alternative to the existing evaluation process, the NPRM does not appear to support this confidence.

<sup>16</sup> See, e.g., Comments of DGPT at page 2; Univisa at 8.

worldwide telecommunications companies now derive roughly equivalent revenues from numerous countries in the world. Presumably, this would require the Commission to evaluate conditions in all such markets, a process that Cable and Wireless correctly argues is needlessly protracted and contentious.<sup>17</sup>

This complex analysis will be conducted from the perspective of the United States, potentially increasing the perception that inaccurate judgments are being made and provide little assurance to foreign governments that they will be rewarded if they in fact open their markets to competition.<sup>18</sup> In addition, the proposal shifts the burden of documenting and defending a foreign country's policies to the potential market entrant, an entity that often is separate and distinct from the government and may not necessarily support its policies.

The Commission's proposal to evaluate a multiple factors during the 214 review process will result in a case-by-case review of each application which will not assist investment decisions.<sup>19</sup> The combination of these criteria will result in no greater regulatory certainty than the present framework, and in fact provide even greater opportunities for entrenched interests to delay entry of foreign competitors.

#### **IV. THE EQUIVALENT MARKET ACCESS POLICY COULD BECOME A TOOL TO PROTECT THE VESTED INTERESTS OF EXISTING UNITED STATES CARRIERS**

The effective market access policy would be a basis upon which the Commission could, in selected circumstances, deny entry to the United States market to potential new competitors from other countries. Any such policy presents existing carriers providing services in the United States with a regulatory basis on which they might oppose the entry of such new competitors into their existing markets. It is unlikely that such a policy could be used to increase the amount of foreign competition to the entrenched existing

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<sup>17</sup> Comments of Cable and Wireless at 5.

<sup>18</sup> Comments of Deutsche Telekom at 30.

<sup>19</sup> See, e.g., Comments of France Telecom at 8.

competitors. In the end, therefore, the policy constitutes a tool that incumbent carriers may use to effectively restrict entry by new competitors and ultimately harm competition, irrespective of its alleged benefits.

AT&T's comments present a clear example of the economic incentives to delay or deter competition which would be created by such a policy. Instead of encouraging competition, the policy becomes a tool which incumbent carriers may use to preclude competition from new entrants. It is ironic, in fact, that few state regulatory bodies in the United States have adopted regulations for local service providers that are as comprehensive as those recommended by AT&T and BT-North America for foreign market regulation. Should the Commission decide to adopt AT&T and BT-North America's suggestions,<sup>20</sup> it is doubtful that even United States owned local exchange companies could demonstrate to the Commission that their home state allowed "equivalent market access."

Given the increasing liberalization of Canadian, British, Mexican and Japanese markets and the potential for U.S. carrier involvement in those markets, it is difficult to envision how the presence of any foreign competitor in the United States market — even one headquartered in foreign market which did not meet the proposed equivalent market access test — could adversely impact the competitive market in the United States. In fact, the proposed equivalent market access test would do little more than maintain the status quo for the carriers and have negative repercussions for the market. AT&T, with little domestic need for foreign capital, could continue to enter foreign markets and global alliances unfettered and BT-North America's investment in MCI would not be challenged. On the other hand, any potential entrant seeking to compete with either carrier must prove that its home market satisfies the strict market equivalency criteria proposed by these two companies. This is a formidable entry barrier that will effectively preclude new competitors.

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<sup>20</sup> See Comments of AT&T at 28-38; BT-North America at 3.

For these reasons, particularly when combined with the remaining ambiguities in the standards the Commission would propose to apply to a 214 application, the proposed equivalent market access test seems designed to restrict market entry. This is directly contrary to the consistent policies of market liberalization implemented by the Commission in the United States and espoused abroad.

If anything, the equivalent market access requirement will strengthen the market power of those carriers that currently have monopoly, or near-monopoly control of their home markets by providing those carriers with an effective tool and forum to prevent or at least delay new entry.

**V. THE PROPOSED EQUIVALENT MARKET ACCESS POLICY WILL NOT PREVENT ANTICOMPETITIVE BEHAVIOR IN THE UNITED STATES**

Several parties argued that implementation of equivalent market access requirement would encourage global competition by preventing foreign carriers from gaining an unfair advantage from their ability to provide end-to-end services in the United States, while U.S. carriers cannot do so in other countries.<sup>21</sup> However, this position ignores two fundamental points.

First, the proposed policy significantly distort competition in other countries. For example, as pointed out in SCT's opening comments, a potential effect of the proposed policy would be to make the benefits of United States market participation more easily available to foreign firms with U.S. affiliates that hold existing Section 214 authorizations than to foreign firms without such affiliations. This, in turn, distorts domestic competition in Mexico in favor of those Mexican telecommunications providers with U.S. affiliates, as

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<sup>21</sup> See, e.g., Comments of AT&T at page 8.

the U.S. affiliate may condition attractive prices for U.S. service on the use of its Mexican affiliate.<sup>22</sup>

Second, the proposed policy does not appear to adequately recognize the rapidly evolving variety of global business alliances that are becoming the vehicles for the provision of international services in numerous countries. These alliances currently include unregulated marketing organizations formed by entities that are also related through common stock investment,<sup>23</sup> marketing organizations formed by unrelated corporate entities,<sup>24</sup> minority investments by one national carrier in another carrier,<sup>25</sup> as well as traditional of entry into the United States market through acquisition of a subsidiary or expansion of corporate activities. Additional variations are continually arising and will continue to arise, regardless of the Commission's decision with respect to the effective market access policy. For example, irrespective of the nature of a foreign country's market, a carrier from that country might join in a marketing alliance with a U.S. carrier providing it effective access to United States customers without the need for obtaining any approval whatsoever from the Commission.

Quite simply, a foreign carrier providing service in the competitive United States telecommunications market will not have sufficient market power to engage in anticompetitive behavior, rendering an equivalent market access requirement unnecessary and burdensome. Moreover, there are a variety of non-equity and partnership arrangements that permit a carrier to effectively evade the Commission's restrictions on foreign entry and investment.

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<sup>22</sup> Comments of SCT at 14-15.

<sup>23</sup> *E.g.*, the Concert Center of MCI and BT.

<sup>24</sup> *E.g.*, World Partners which includes AT&T, KDD, Unisource (itself a marketing organization comprised of national carriers) and others.

<sup>25</sup> *E.g.*, BT's investment in MCI.

## **VI. THE PROPORTIONAL RETURN POLICY SHOULD BE STUDIED IN DETAIL**

AT&T has argued in favor of codifying the Commission's existing proportionate return policy on the grounds that a foreign carrier can favor a U.S. affiliate by, in essence, modifying its return traffic allocation in favor of its affiliate.<sup>26</sup> SCT and others have argued against such codification, noting that it will only benefit existing market arrangements and not increase competition.<sup>27</sup> While the Commission may legitimately be concerned over net outflows of international settlement payments, it should review the reasons for such outflows rather than concluding that any outflows are not in the public interest.

The traditional policy of required proportional return of international traffic was developed in a market environment of interconnection by United States carriers with a monopoly foreign correspondent. This situation is in the process of change, as additional countries begin to permit multiple carriers to originate international traffic in their country. Often, as SCT expects to occur in Mexico, these new carriers (as well as the incumbent carrier) will have some form of corporate or strategic alliance with one or more of the carriers from other countries. The SCT envisions that, by the end of 1996, the international telecommunications market will be one characterized by multiple carriers at both the originating and terminating ends of a call. As a result, the rules in effect must reflect the competition that exists at both ends. This is especially important for Mexico, where approximately 90 percent of its international traffic terminates in the United States.

As new international market structures evolve the continued wisdom of requiring proportional return traffic should be studied in detail by the regulatory authorities of all countries to determine if its continuation or modification would best serve the public interest. In view of these developments, the proportional return concept should not be

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<sup>26</sup> AT&T Comments at 15-16.

<sup>27</sup> Comments of GTE at 9; SCT at 16.

further embedded in United States policy until the completion of such analysis, which should include careful consideration of the views of other involved countries and should being immediately.

## **VII. CONCLUSION**

As evidenced by the pervasive market restructuring embodied in Mexico's recent Telecommunications Law, SCT is a strong advocate of the fundamental economic principles of market liberalization, competition, and deregulation which have been successfully implemented domestically by the Commission, and which are having an ever-increasing impact around the world by way of example. SCT believes that these trends are irreversible, and that regulatory structures must continue to evolve rapidly to reflect the changing technology and economics of this industry.




The Commission should carefully evaluate the actions it can take in order to foster the development of these trends. SCT submits that the formalization of a policy designed to restrict access is not such an effective mechanism. Instead, based upon its confidence as to the soundness of the fundamental economic principles which it has implemented, as demonstrated by the results of the U.S. and now other markets, the Commission should encourage the adoption of such policies and assist other countries in understanding the successful consequences of such actions. As a specific example of such policies, the Commission should commence further study of the proportional return concept, particularly in the context of market structures with competitive carriers on both sides of the border.

Dated: May 12, 1995

Respectfully submitted,

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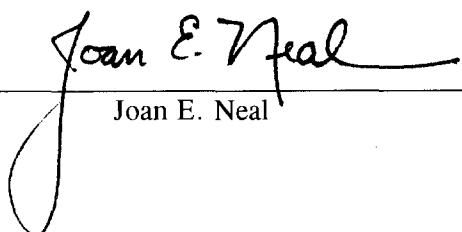
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